

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

MAY 20 1993

In the Matter of)	
)	
Federal-State Joint Board on)	CC Docket No. 96-45
Universal Service)	
)	
Forward-Looking Mechanism for)	CC Docket No. 97-160
High Cost Support for Non-Rural)	
LECs)	DA 98-715 - USF Proposal
)	

To: The Common Carrier Bureau

REPLY COMMENTS OF PUERTO RICO TELEPHONE COMPANY

Puerto Rico Telephone Company ("PRTC") urges the Commission to adopt PRTC's proposed modification to the Commission's approach for determining universal service support for non-rural carriers serving insular areas. The proposal should be adopted because it complies with the requirements of Section 254 of the Communications Act by ensuring that consumers in insular areas will receive basic services at comparable rates.

I. CARRIERS SERVING INSULAR AREAS SHOULD TRANSITION TO THE PROXY MODEL METHODOLOGY ON THE SAME SCHEDULE AS RURAL CARRIERS

Section 254(b)(3) specifies that customers in rural, insular, and high cost areas must have access to services at rates that are reasonably comparable to the rates of consumers in urban areas.¹ The Commission has determined that rural carriers cannot be transitioned immediately to the proxy model methodology because this methodology has not been sufficiently refined to ensure that universal service will not be jeopardized because the mechanisms cannot predict the

¹ 47 U.S.C. § 254(b)(3).

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cost of serving the area with sufficient accuracy.² This rationale is equally applicable to insular areas.

A. Insular Areas Are Not Equipped to Absorb Losses in Federal Universal Service Support

Universal service efforts must be targeted to those areas where the nation's universal service goals have not been met. Universal service inarguably has not been achieved in Puerto Rico, where the telephone penetration rate is 76 percent. The Virgin Islands Telephone Company ("Vitelco") reports a similarly below-average penetration rate in the Virgin Islands of 87 percent.³ The Commission has sought to ensure that service penetration is not affected in areas served by rural carriers due to the expected adverse effects of an immediate flash-cut shift to the proxy model methodology; however, no corresponding provision has been made for insular areas, where penetration rates are lower and where the model results will jeopardize universal service efforts in Puerto Rico.

Vitelco agrees that insular areas are not equipped "to generate a universal service fund to supplement partial funding by the federal government."⁴ Under the proposed universal service methodology, the Virgin Islands would be required to fund an \$8.5 million reduction in support.⁵ In Puerto Rico, the anticipated loss in federal support could be almost twenty times greater, as high as \$140 to \$150 million. Vitelco accurately summarizes the effect of such a plan – a significant increase in rates contrary to congressional intent. The Telecommunications Regulatory Board of Puerto Rico clearly recognizes that shifting this support burden to Puerto

² See Federal-State Joint Board on Universal Service, Report and Order, 12 FCC Rcd 8776 (¶ 293) (1997).

³ Vitelco Comments at 6 n.11 (filed May 15, 1998).

⁴ Id. at 4.

Rico and its citizens is not a viable solution, having also proposed a transition plan for Puerto Rico.⁶

Puerto Rico alone faces the specter of immediate and drastic reductions in federal support, because it happens to be served by a non-rural carrier. Other similarly situated areas, on the other hand, escape the anomalous results of the proxy model methodology simply because service is provided to these areas by carriers that meet the definition of a rural carrier. The solution for this irrational result is to adopt PRTC's proposal for insular areas to give effect to the plain meaning of Section 254 and to ensure satisfaction of an unambiguous national policy goal – to preserve and advance universal service.

B. No Revision to the PRTC Proposal Is Required

A group of competitive local exchange carriers in Puerto Rico, together referred to as the Association of Competitive Telecommunication Providers ("APCT"),⁷ apparently object to giving effect to the plain words of the Act by adopting "rural carrier" treatment to carriers serving insular areas. According to APCT, PRTC's request should be treated as a waiver request applicable only to Puerto Rico. The proposal, however, is already sufficiently tailored to assist only those insular areas where federal support to the insular area would otherwise be reduced, thereby satisfying the express language of the statute and the Commission's pledge that federal support should not be reduced to any state.

(..continued)

⁵ Id.

⁶ See Ex Parte Letter from Phoebe Forsythe Isales, President to William E. Kennard, Chairman (dated April 22, 1998).

⁷ The member carriers identified are AT&T of Puerto Rico, Cellular Communications of Puerto Rico, Celpage, CoquíNet, Insticall, Mtel P.R., and Sprint Caribe.

PRTC's proposal for insular areas is consistent with the Commission's conclusion that rural carriers would be transitioned to the proxy model methodology once it has been determined that the model accurately predicts these carriers cost of providing service.⁸ APCT, however, is "troubled" by this aspect of the proposal, claiming that Puerto Rico's citizens will be deprived of the benefits of competition. This baseless assertion ignores the fact that universal service helps to ensure reasonable local rates. Moreover, this support is competitively neutral such that any support awarded under the proposal is portable to any competitor that serves eligible lines. Thus, APCT has provided no support for departing from this rural carrier methodology for carriers serving insular areas.

II. THE COMMISSION SHOULD ADOPT THE PRTC PROPOSAL WITHOUT CONDITIONS

APCT generally support the insular area proposal; however, these carriers have requested the imposition of unjustified conditions in an attempt to raise issues beyond the Commission's jurisdiction and unrelated to the provision of universal service. The requested conditions reflect these carriers' basic misunderstanding of the Commission's regulation of PRTC as a rate of return carrier.

First, APCT demands that the Commission require PRTC to establish a separate subsidiary for competitive services, claiming that the Commission granted PRTC a waiver of the separate subsidiary requirement for competitive services.⁹ Although APCT implies that PRTC has avoided some long-standing obligation, the Commission only recently applied competitive service safeguards for the provision of CMRS to all local exchange carriers, effective February

⁸ See USTA Comments at 5-6.

⁹ APCT Comments at 7.

11, 1998.¹⁰ A more stringent separate subsidiary requirement previously applied only to Bell operating companies. PRTC has been granted a temporary waiver of the revised CMRS safeguard requirements, based on a pending IRS tax ruling.¹¹ Thus, the first requested condition is without merit.

Second, APCT claims that PRTC should be required to submit cost support for its interconnection and access rates as a condition to receiving universal service support under the PRTC proposal.¹² In addition, APCT proposes that the Commission require both PRTC and the Telecommunications Regulatory Board of Puerto Rico submit quarterly reports outlining efforts to encourage competition and reduce PRTC's costs.¹³ These meritless conditions attempt to insert the Commission unlawfully into the regulation of local rates and services in Puerto Rico. Clearly, universal service must not be used as a "backdoor" effort to circumvent the jurisdictional authority of the Telecommunications Regulatory Board of Puerto Rico.¹⁴ APCT's transparent efforts to impede PRTC's ability to offer universal service and to bypass the local Telecommunications Regulatory Board would only impose a sanction on the customers of Puerto Rico in the form of rate increases.

¹⁰ See Amendment to the Commission's Rules to Establish Competitive Service Safeguards for Local Exchange Carrier Provision of Commercial Mobile Radio Services, Report and Order, 12 FCC Rcd 15668 (1997).

¹¹ See Puerto Rico Telephone Company: Request for Temporary Waiver of the Commission's Rules to Establish Competitive Service Safeguards for Local Exchange Carrier Provision of Commercial Mobile Radio Services, WT Docket No. 96-162, Order, DA 98-702 (rel. April 10, 1998).

¹² APCT Comments at 7-8.

¹³ Id. at 9.

¹⁴ Having failed to have the Board's activities preempted, these carriers apparently have assumed a more subtle strategy for doing so. See Petition for Declaratory Ruling Regarding Preemption of the Puerto Rico Telecommunications Act of 1996, CCBPol 96-24, Order, DA 98-534 (rel. March 19, 1998) (granting joint motion to withdraw petitions).

The APCT proposed reporting conditions also ignore the Commission's continuing ponderous regulation of rate of return local exchange carriers. APCT suggests (remarkably) that PRTC would be relieved of regulatory scrutiny as part of the proposal.¹⁵ To the contrary, PRTC remains subject to a panoply of accounting and reporting requirements that must be filed with the Commission on a regular basis, and these would continue to apply with the adoption of its proposal. For example, PRTC records its expenses and revenues according to the Commission's Uniform System of Accounts set forth in Part 32. It separates its costs between regulated and non-regulated services according to Parts 36 and 64 of the Rules. PRTC also files annual ARMIS reports. It calculates and files its annual access tariff as required under Part 69 of the Commission's Rules, which also permits any of the carriers suggesting that PRTC will be less regulated than other carriers to review and petition against such tariffs. This annual filing requires the submission of cost support.

With respect to universal service support specifically, PRTC files reports regularly with the National Exchange Carrier Association and now also the Universal Service Administrative Company (FCC Form 457), regarding high cost and long term support components of the fund. Delaying the transition to a proxy model methodology, which predicts the hypothetical cost of providing service, would preserve these levels of regulatory oversight, rather than alleviate them as implied by APCT. Contrary to APCT's obvious misunderstanding of this process, no additional regulatory scrutiny is necessary to ensure the validity of universal service support to Puerto Rico.¹⁶

¹⁵ APCT Comments at 7-8 ("PRTC should be required to face no more or less regulatory scrutiny than applies to LECs in all 50 states of the Union.").

¹⁶ Against this background, CelPage's claim that "PRTC has not been subject to any independent regulatory since 1975" (at 4) is ludicrous.

Third, APCT demands a definite “end date” to Puerto Rico’s treatment as an insular area.¹⁷ As discussed previously, PRTC’s proposal is consistent with the Commission’s decision regarding the treatment of rural carriers; APCT has provided no reasons why carriers serving insular areas should be transitioned to the proxy model methodology in advance of ensuring that the model accurately predicts cost of providing the service to the area.

The conditions proposed by APCT are without merit. PRTC has demonstrated that carriers serving insular areas should be transitioned to the proxy model methodology with rural carriers. To do otherwise in light of the current proxy model results threatens universal service, particularly in areas where the service penetration rate lags far behind the nation’s goals for universal service.

III. CONCLUSION

The PRTC proposal provides specific universal service relief to insular areas, consistent with the Communications Act, and it should be adopted.

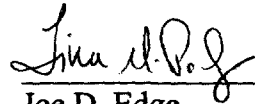
- For any insular area that would receive less funding under the proposed proxy model methodology than received under the methodology used in 1998, support for carriers serving a designated universal service area within such insular area shall remain based on the 1998 methodology until at least January 1, 2001.
- For carriers serving the insular areas identified above, there will be no transition to a proxy model methodology unless and until it can be determined that the model accurately predicts a carrier’s cost of serving the area.
- For the purposes of this methodology, “any insular area” means any state, commonwealth, or territory that may be classified as insular.

¹⁷ APCT Comments at 8-9.

The proposal is sufficiently tailored, because it provides relief only for those insular areas where universal service support would be reduced under the proxy model methodology. The Commission should reject the revisions and ill-founded conditions proposed by the APCT, which are grounded in a desire to use this proceeding to attempt to gain a competitive advantage and a failure to understand existing regulation related to universal service.

For these reasons, PRTC respectfully requests that the Commission adopt PRTC's proposal for revising the methodology for determining non-rural carrier universal service support for insular areas.

Respectfully submitted,



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Dated: May 29, 1998

CERTIFICATE OF SERVICE

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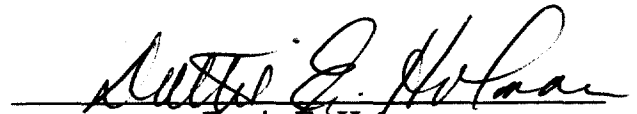
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